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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,794	02/23/2004	Mark Roland Boeder	CHRE:178	6789

7590 04/21/2005

PARKHURST & WENDEL
SUITE 210
1421 PRINCE STREET
ALEXANDRIA, VA 22314

EXAMINER

GRUNBERG, ANNE MARIE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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16/782,794

EXAMINER

ART UNIT

PAPER

041805

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents**Rule 105 Requirement for Information**

The claimed chrysanthemum plant 'Cetwotone Pink' is described in Plant Breeder's Right (PBR) application number QZ PBR 011850, published 2/15/2002 more than one year prior to the filing date of the instant application. The applicant has stated that the flower was sold at the flower auction in the Netherlands on August 2002, more than one year prior to filing in the United States. The UPOV-ROM indicated that publication occurred at least by 2/15/2002, however no denomination was recorded. The Community Plant Variety Office in France sent a letter of correction to the Examiner (copy attached to this communication) informing her that the current denomination was first proposed 1/29/04 and published 4/15/04. A copy of correspondence from the Applicant to the Community Plant Variety Office indicates that the earliest date a denomination was proposed was 12/25/03. Additionally, Applicant included a copy of the first advertisement of the instant plant that was published less than a year prior to filing in the United States.

The UPOV publication cited above discloses the claimed variety and Applicant admits that the sale occurred more than one year prior to the U.S. filing date. However, a question remains as to the accessibility of the foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of the foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art. One of ordinary skill in the art would have known where to obtain the claimed plant by, for example by searching the Internet for the UPOV listed breeder "Chrysanthemum Breeders Association" one could have easily obtained the following contact information listed on the web site <http://www.cba-nv.nl/index.cfm?act=Contact.formulier>, CBA N.V., Rijshornstraat 205, Rijsenhout, P.O. Box 370, 1430 AJ Aalsmeer, The Netherlands, Telephone +31 (0)297 34 78 70, Fax +31 (0)297 34 46 12, info@cba-nv.com. With that information, one of ordinary skill in the art could check the availability of the claimed plant and where to purchase that plant even if armed with just the Breeders' reference number.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine the accessibility of the foreign sales and the reproducibility of the flowers that were sold to the public, more than one year prior to the effective filing date of this application.

In response to this requirement please provide:

a) clarification as to exactly what was sold more than one year prior to filing for patent in the United States. It is not clear if only cut flowers were sold or if the entire plant was sold. It is also unclear if only cut flowers were sold whether any foliage would have been

present on the cut flowers as well.

b) it is unclear whether the sale(s) more than one year prior to filing in the U.S. was an obscure, solitary occurrence that would go unnoticed by those skilled in the art;

c) any information relating to the accessibility or non-accessibility of the claimed plant that one of ordinary skill in the art could have derived from the printed PBR document as it is unclear whether one of ordinary skill in the art would have been able to obtain information about the plant from the Chrysanthemum Breeders Association armed only with the breeders' reference number;

d) Applicant is also invited to submit any information that would indicate that one of ordinary skill in the art would not have known how to successfully reproduce the plant. For example, information pertaining to a reference indicating that chrysanthemum do not reproduce true to type from tissue culture of the petals is enclosed, but it appears that one of ordinary skill in the art would have been able to tissue culture the plant from the pedicel or foliage of any cut flowers. Any information to the recalcitrance of this genotype to pedicel or foliage tissue culture is sought.

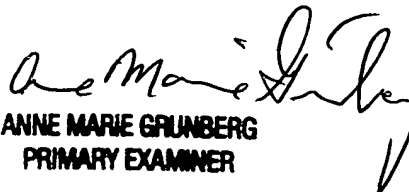
e) It is not clear whether one of ordinary skill in the art would have been able to obtain the publication of the application indicated on the UPOV hit on 2/15/02 (or more than one year prior to the filing for patent in the United States) or whether the lack of denomination also affected this publication date as well. Often the UPOV hits have a publication date for the denomination as well as one for the application filing. Although the communication from the Community Plant Variety Office indicates that the denomination was published 4/15/04, it is silent as to when the application itself was published and it appears that information on the UPOV hit has not changed as a result and only the publication date of the denomination was affected.

It is reasonable to expect that Applicant or the assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).


ANNE MARIE GRUNBERG
PRIMARY EXAMINER



European Union
Community Plant Variety Office

Mrs. Anne-Marie Grunberg

United States Dept. of Commerce
Patent and Trademark Office
Commissioner for Patents
P.O. Box 1450
Alexandria
Virginia 22313-1450
USA

Our ref: rc/jm/50020d

Subject: **Observation to a submitted variety denomination**

Denomination

Cetwotone Pink

Put up for registration with the US Patent and
Trademark Office under ref. **10/782,794**.

Species

Chrysanthemum

Applicant (name and address)

Chrysanthemum Breeders Association
(the Netherlands)

Bulletin

UPOV CD ROM no. 6/2004

Observation

Please be informed that this denomination
was **proposed** on **29 January 2004**, as
opposed to the information available on
the UPOV CD ROM (21 November
2001).

Published on 15 April 2004 (2001/1850)
and granted Community plant variety
rights under no. **EU 13.836** on **19 July
2004**.

Date

7/01/05

Signature

Rudi Caes

ANSWER 1 OF 1 CAPLUS COPYRIGHT 2005 ACS on STN

AN 1994:319557 CAPLUS

DN 120:319557

TI Generation of genetic variability by the chrysanthemum
tissue culture method

AU Karki, Asha

CS Tissue Cult. Lab., Dep. For. and Plant Res., Kathmandu, Nepal

SO Role Biotechnol. Agric. (1992), 109-14. Editor(s): Prasad, B. N.;
Ghimire, G. P. S.; Agrawal, V. P. Publisher: Oxford & IBH, New Delhi,
India.

CODEN: 59VHAG

DT Conference

LA English

=> d l1 abs

L1 ANSWER 1 OF 1 CAPLUS COPYRIGHT 2005 ACS on STN

AB Plants regenerated through tissue
culture were established for various explant sources
such as leaf, pedicels, flowers, buds and petals. Effects of
IAA, BAP, NAA, and kinetin on
morphogenesis were studied. Plants from petal
explants were phenotypically different when coupled with
the parental plants. These regenerated plants
differed in relation to the height of the plant and flower morphol. So,
it was possible to generate genetic variability in Chrysanthemum